cant controversy than *Campos* itself. Here, in addition to the prohibition against returning, Petitioner was ordered by the district court to comply with a list of *additional* conditions, many of which place limitations on lawful activity. *E.g.*, Pet. App. 15a (restriction on aicohol consumption); *id.* (restriction on association). Indeed, the district court's order specifically ordered Petitioner to comply with the various conditions of supervised release even after his removal. *Id.* at 31a (*"While you're on supervised*[] *release*, Mr. Sanchez, you are not to return to the United States .... *You are to* .. . *obey all the other standard terms and conditions adopted by this Court.*" (emphasis added)); *Id.* at 13a-17a (listing conditions of Petitioner's supervised release).[7]

The Government makes only a weak attempt to distinguish *Campos*, pointing out that the *Government* sought review in *Campos*. Opp. 7. We know of no Article III doctrine that conditions the existence of a "case or controversy" on which party is seeking review, nor does the Government cite any case for this novel proposition. In addition, the Government argues that *Campos* is distinguishable because reversal "could have led to extradition of the defendant[]." *Id.* Not only does this rationale not appear anywhere in *Campos* (or the *Campos* briefs or oral argument), it fails to distinguish this case: in light of the near identical facts, if the possibility of extradition was sufficient to present a live controversy in *Campos*, the same is true here.[8]

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[7] *See also United States* v. *Williams*, 369 F.3d 250, 253 (3d Cir. 2004) (18 U.S.C. § 3583 provides a "'clear indication that a term of supervised release remains in effect after the defendant is deported'" (citation omitted)); *United States* v. *Ramirez-Sanchez*, 338 F.3d 977, 980 (9th Cir. 2003) ("A defendant's deportation does not extinguish supervised release."); *United States* v. *Akinyemi*, 108 F.3d 777, 779-780 (7th Cir. 1997) (holding that deportation does not extinguish supervised release); *United States* v. *Brown*, 54 F.3d 234, 238 (5th Cir. 1995) (same).

[8] The Government incorrectly attempts to invoke cases involving the "collateral consequences" doctrine with respect to Petitioner's supervised release. Opp. 5-8 (citing *Spencer* v. *Kemna*, 523 U.S. 1 (1998), and *Lane* v. *Williams*, 455 U.S. 624 (1982)). The "collateral consequences" doctrine,

Even apart from Petitioner's ongoing supervised release, the *immigration* "collateral consequences" furnish an independent reason why this case is not moot. *See United States* v. *Villamonte-Marquez*, 462 U.S. 579, 581 n.2 (1983). Among other consequences, an aggravated felony conviction impacts an individual's ability to obtain a temporary non-immigrant visa under 8 U.S.C. § 1182(d)(3). Indeed, the Second Circuit recently held that this precise collateral consequence was sufficient to present a live controversy. *United States* v. *Hamdi*, No. 03-1307, _ F.3d _, 2005 WL 3366948, at *2-4 (2d Cir. Dec. 12, 2005) (case presented live controversy, notwithstanding completion of sentence and subsequent deportation, because of the impact on whether visa under § 1182(d)(3) would be granted); *see also In re David Michael Labadie*, 2004 WL 848422 (BIA Feb. 27, 2004) (aggravated felony conviction given significant weight in determining whether § 1182(d)(3) visa should be granted).

CONCLUSION

The petition for a writ of certiorari should be granted.

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however, seeks to ascertain the likelihood of *future* collateral consequences (such as the ability to vote or get a job) resulting from a conviction or sentence. *See Spencer*, 523 U.S. at 8. Petitioner does not rely on these cases with respect to his supervised release, as he is *currently* subject to conditions ordered by the district court. *See, e.g., Jago* v. *Van Curen*, 454 U.S. 14, 21 n.3 (1981) (case not moot where respondent released on parole); *Campos*, 404 U.S. at 294 n.2 (live controversy where defendant "on probation subject to conditions imposed by the District Court"); *see also* 18 U.S.C. § 3583(d)(2) (describing supervised release conditions as "deprivation of liberty"); *Reno* v. *Koray*, 515 U.S. 50, 59 (1995) (describing supervised release as a "restriction on liberty").

The Government also suggests (Opp. 6) that a decision in Petitioner's favor would not redress his injury. That is incorrect. Due to the erroneous sentencing enhancement, Petitioner was sentenced to more than one year in prison, thereby triggering a *mandatory* one-year term of supervised release. *See* USSG 5D1.1(a). Absent this enhancement, Petitioner would have been sentenced to only one to seven months in prison, and would not have been subject to the mandatory one-year term. *Id.*; *see also* Pet. App. 20a (offense level of five without eight-level enhancement); U.S. Sentencing Comm'n, Federal Sentencing Guidelines Manual Ch. 5, Pt. A (Nov. 2003) (Category III) (range of one to seven months).

Respectfully submitted,

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DECEMBER 2005

APPENDIX

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 70-46

UNITED STATES OF AMERICA,

Petitioner,

v.

DIMAS CAMPOS-SERRANO

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 30, 1970
CERTIORARI GRANTED MARCH 1, 1971

APPENDIX

[STAMP: FILED APR 15, 1971]

[1]

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[114]

* * *

The COURT. There will be a finding of guilty. Judgment will be entered upon that verdict of the Court.

Mr. Cleary, I am prepared to pass sentence. I don't believe there is any requirement for any presentence investigation here.

Mr. CLEARY. No, sir.

I would ask that the Government would disclose what was the disposition of the case involving Mr. Jose Rodriguez Ortiz, charged with a similar offense, merely for information of defense counsel and for the Court.

[41] The COURT. You mean for mitigation?

Mr. CLEARY. Yes, sir.

The COURT. To me.

Mr. MACKENZIE. Your Honor——

The COURT. You are required to do that as an officer of this court.

Mr. MACKENZIE. Mr. Ortiz pled guilty. I'm not certain of the date right now. It was in the early part of December—I believe around the 16th or 12th of December—and he was [115] placed on five years' probation, a condition of the probation being that he not reenter the United States illegally during that period or he would be sentenced—I'm not sure whether it was two years——

The COURT. Now, you have answered that question.

What do you have to say in this case?

Mr. CLEARY. At this time I would like to point out to your Honor that this defendant has absolutely no criminal

record whatsoever, that he merely manifested a desire to obtain work in this country, that he came up to this country and was living here, supporting his family back in Mexico.

The family back in Mexico consists of—I believe he has seven brothers and sisters. I am not exactly sure on [42] the exact amount, but he was sending money home, and that in this particular case there was evidenced merely a desire to come to a better country, and I think sometimes in this particular situation we have to consider what the defendant's background was.

The COURT. You mean a better country economically, not a better country. I don't think he would agree to the fact that this was a better country than Mexico.

Mr. CLEARY. Well, I think he would, your Honor.

The COURT. I doubt it.

Mr. CLEARY. In any event, I think that the question is that these [sic] are continually these types of cases. I personally felt, and I exhibited to the Court, that this was a matter for straight deportation, which would have been the normal situation, and only upon reentry would a man be subject to—

The COURT. This is a felony.

Mr. CLEARY. Criminal prosecution.

However, the felony arises out of the fact of this falsely made certificate, and I think that there are many here that [43] are under different devices. I think the purpose of the statute was directed more towards those who would submit false documents, birth certificates and other documents to gain entry into this country.

The COURT. It is in the statute—it is that the indictment says.

Mr. CLEARY. Well, I know, the government and I have differences as to the indictment.

The COURT. I assume you would have, but that is what the indictment charges and the Code provides that it is a felony—

[116] Mr. CLEARY. Well, your Honor, I can only—

The COURT. —punishable by five years in the penitentiary or a $2,000 fine or both.

Mr. CLEARY. I can only draw upon and ask for the discretion and generosity of the Court, because I think that although this man has gone through trial—

The COURT. He is entitled to a trial.

Mr. CLEARY. Yes, sir.

The COURT. There is no question about that, and he won't be penalized by the fact that he asked for a trial.

What do you have to say, Mr. District Attorney?

[44] Mr. MACKENZIE. Your Honor, the Government has no evidence to indicate that the defendant has any prior criminal record or any prior violation of the Immigration laws.

The Government would point out to your Honor the recurring problem to this country of aliens entering illegally, that this problem is of course compounded gravely by the use of fraudulent documents which are purchased or procured down in Mexico and are used to obtain entry into the United States illegally, as in the case of the defendant herein.

That is all, your Honor.

The COURT. Very well, I will recess the court for five minutes.

(A short recess was taken.)

The COURT. Let the record reflect that the defendant has been, through the interpreter, permitted to speak to this Court and he has related to the Court that he asks permission to go back to Mexico.

He knows that this is a felony, that I can send him to the penitentiary for five years and fine him $2,000—does he know that?

The DEFENDANT. (Through Interpreter) No, I [45] didn't know that.

The COURT. You are now advised be [sic] me, that that is true, and also by your counsel.

Mr. CLEARY. We have discussed the penalty before, your Honor.

The COURT. Yes.

Mr. CLEARY. He might not have known it at the time of the offense.

The COURT. All right.

Well, I will herewith remand him to the custody of the Attorney General for a period of three years, and I shall suspend [117] that sentence, placing him on probation for that time.

Now, you tell him that.

The DEFENDANT. (Through Interpreter) Yes.

The COURT. And if you reenter the United States I can impose the sentence. Tell him that.

The DEFENDANT. (Through Interpreter) Yes, I will never be back.

The COURT. The condition of that probation is that he better not return to the United States illegally.

The DEFENDANT. (Through Interpreter) Yes.

The COURT. And he will pay his own way back [46] to Mexico, Mr. Ferris.

Mr. District Attorney.

Mr. MACKENZIE. Your Honor, I would request at this time that the United States Marshal be directed to remand the defendant to the custody of the Immigration Service for deportation, pursuant to the deportation entered on November 22.

The COURT. It is so ordered.

Mr. CLEARY. Your Honor, at this time in this proceeding what I would like to do is file together and collectively a renewed motion for judgment of acquittal, motion for new trial and motion for arrest of judgment.

The COURT. Overruled.

Mr. CLEARY. At this time I would file with the Court a notice of appeal and a motion for leave to proceed in forma pauperis.

The COURT. Motion to appeal is denied as being frivolous. Motion to proceed in forma pauperis is denied. He is going back to Mexico.

Mr. CLEARY. Can I file the document with the Court, sir?

The COURT. You may file the document, but it [47] is denied. You can file it.

Anything further, Mr. Cleary?

You can file whatever documents you want.

Mr. CLEARY. No, sir, that takes care—

The COURT. But they are denied. He is fortunate in having you make the plea that you did make for him, and tell him I said so.

Mr. CLEARY. Thank you very much, your Honor.

One point though, your Honor. You made an aside to the reference that the defendant was to pay his own way back to Mexico.

[118] The COURT. He said that to the interpreter.

Mr. CLEARY. But I don't think he has the money.

The COURT. He told the interpreter that, didn't he, sir —Mr. Wimer?

Mr. WIMER. Yes, sir, and he will repeat it again just now—

Mr. CLEARY. Did you ask him how much money? If he had, I didn't know, so there's no misunderstanding.

Mr. WIMER. I didn't ask him that, because your Honor—

The COURT. You just forgot to get your fee.

This court stands in recess until 2:00 o'clock.

[48] Mr. CLEARY. Thank you, your Honor.

(Which were all of the proceedings had at the trial of the within cause on the day and date herein.)